



**RIN 3064-ZA14**

**Request for Information on FDIC Official Sign and Advertising Requirements and Potential Technological Solutions**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Request for information and comment.

**SUMMARY:** As banks and savings associations adjust their business models to innovate and remain competitive, and as such digital transformation continues to accelerate, the FDIC is renewing its effort to consider how to revise and clarify its official sign and advertising rules related to FDIC deposit insurance. The FDIC is issuing this Request for Information (RFI) to inform FDIC efforts to align the policy objectives of its rules with how today's banks and savings associations offer deposit products and services and how consumers connect with banks and savings associations, including through evolving channels. The FDIC also requests information about how technological or other solutions could be leveraged to help consumers better distinguish FDIC-insured banks and savings associations from entities that are not insured by the FDIC (nonbanks), particularly across web and digital channels.

**DATES:** Comments must be received by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by RIN 3064-ZA14, by any of the following methods:

- Agency Website: <https://www.fdic.gov/regulations/laws/federal/>. Follow the instructions for submitting comments on the agency website.
- Email: [Comments@fdic.gov](mailto:Comments@fdic.gov). Include RIN 3064-ZA14 in the subject line of the message.
- Mail: James P. Sheesley, Assistant Executive Secretary, Attention: Comments-RIN

3064-ZA14, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

- **Hand Delivery / Courier:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street, NW, building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m., EST.

All comments received must include the agency name and RIN 3064-ZA14 for this rulemaking.

*Public Inspection:* All comments received will be posted without change to <https://www.fdic.gov/regulations/laws/federal/>—including any personal information provided—for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

**FOR FURTHER INFORMATION CONTACT:**

David Friedman, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898-7168, [dfriedman@fdic.gov](mailto:dfriedman@fdic.gov); Edward Hof, Senior Consumer Affairs Specialist, Division of Depositor and Consumer Protection, (202) 898-7213, [edwhof@fdic.gov](mailto:edwhof@fdic.gov); or Richard M. Schwartz, Counsel, Legal Division, (202) 898-7424, [rischwartz@fdic.gov](mailto:rischwartz@fdic.gov).

**SUPPLEMENTARY INFORMATION:**

The FDIC is an independent federal agency with a mission of maintaining stability and public confidence in the nation's financial system by insuring bank deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships. Today, there are approximately five thousand FDIC-insured banks and savings associations in the United States. The FDIC insures money deposited in FDIC-insured banks and savings associations, and FDIC deposit insurance is backed by the full faith and credit of the United States.

On February 26, 2020, the FDIC published a notice in the *Federal Register* (85 FR 10997) seeking input regarding potential modernization of its official sign and advertising rules to reflect that deposit-taking via physical branch, digital, and mobile banking channels continues to evolve since the FDIC last significantly updated its rules in 2006. On March 13, 2020, the FDIC published an extension of the comment period in the *Federal Register* (85 FR 14678). However, on April 16, 2020, in light of COVID-19, the FDIC announced that it was temporarily postponing its efforts to modify its official sign and advertising requirements. The FDIC noted that the agency remains committed to modernizing these rules at a future date to better reflect how banks and savings associations are transforming their business models to take deposits via physical branches, digital, and mobile banking channels. This notice is substantially the same as the notice published on February 26, 2020, with the exception of the issue of misrepresentations about deposit insurance, as discussed below.

As banks and savings associations adjust their business models to innovate and remain competitive, and as such digital transformation continues to accelerate, the FDIC is renewing its effort to consider how to revise and clarify its official sign and advertising rules related to FDIC deposit insurance. The FDIC is issuing this Request for Information (RFI) to inform FDIC efforts to align the policy objectives of its rules with how today's banks and savings associations offer deposit products and services and how consumers connect with banks and savings associations, including through evolving channels. The FDIC also requests information about how technological or other solutions could be leveraged to help consumers better distinguish FDIC-insured banks and savings associations from entities that are not insured by the FDIC (nonbanks), particularly across web and digital channels.

Although the February 26, 2020, RFI also sought input on how to address misrepresentations about deposit insurance, that subject is not addressed in this RFI. On

an ongoing basis, pursuant to its statutory authority, the FDIC actively seeks to protect depositors by ensuring the FDIC's name, seal, and logo are appropriately used and limited to being associated with insured depository institutions. In light of an increasing number of instances where people or entities have misused the FDIC's name or logo or have made misrepresentations that would falsely suggest to the public that their products are FDIC-insured, the FDIC expects to issue a notice of proposed rulemaking seeking comment on a proposed rule regarding misrepresentations about deposit insurance and misuse of the FDIC's name or logo. The FDIC intends to engage in its efforts to modernize the FDIC official sign and advertising requirements and its rulemaking regarding misrepresentations about deposit insurance in tandem and on a coordinated basis.

### **FDIC Official Sign and Advertising Statement Requirements**

The FDIC's official sign and advertising statement regulations (12 CFR part 328) require banks to continuously display the FDIC sign where insured deposits are usually and normally received in the bank's principal place of business and at all of its branches and to use an official advertising statement, such as "Member FDIC," when advertising deposit products and services. Official sign and advertising statement requirements are set forth in section 18(a) of the Federal Deposit Insurance Act (FDI Act) and have been in place since 1935.<sup>1</sup> The last major changes to the regulations were made in 2006<sup>2</sup> and the rules do not reflect evolving banking channels and operations.

### **Technology and Innovation**

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<sup>1</sup> 12 USC 1828(a). *See* Banking Act of 1935, Pub. L. 74-305, section 101(v) (Aug. 23, 1935).

<sup>2</sup> 71 FR 40440 (July 17, 2006).

The FDIC has begun a number of initiatives focused on innovation and technology. For example, the FDIC established the FDIC Tech Lab (FDiTech) to foster innovation across the banking sector, while simultaneously protecting consumers, markets, and the Deposit Insurance Fund. FDiTech is undertaking a number of activities to promote innovation under four broad themes: *Inclusion, Resilience, Amplification and Protecting the Future*. In February 2021, the FDIC appointed its first Chief Innovation Officer.

Technology has advanced the business of banking in many ways, including how and where depositors interface with banks and savings associations when making deposits. The internet, through online and mobile banking, smart phone applications (apps), digital wallets, and other tools, has had a profound effect on the way banking and deposit-taking is conducted. Some banks have no physical branches. Other banks with physical branches are also increasingly offering ways to open and manage accounts online or through mobile apps. Remote deposit capture for depositing checks, introduced in the early 2000s, has become a common feature of many banking apps. In addition, some banks have moved away from the traditional branch/bank teller models to electronically-staffed kiosks and pop-up facilities and teller-less cafes where deposits can be accepted on tablets. In addition, some consumers “deposit” funds with prepaid account providers and technologically-focused financial companies (fintechs), some of which are not themselves FDIC-insured banks.<sup>3</sup> In some cases, consumers have difficulty distinguishing FDIC-insured banks from nonbank fintechs when they look online for places to put their money. This can also occur when the nonbank fintech advertises deposit products from FDIC-insured banks and savings associations.

Given these banking industry developments, the FDIC is seeking information on

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<sup>3</sup> Some uninsured companies enter into deposit arrangements with FDIC-insured banks, which may, under some circumstances, result in “pass-through” deposit insurance being applied per customer. *See generally*, 12 CFR part 330.

its official sign and advertising requirements to align with how banks offer products through various deposit-taking channels and how consumers interact with banks.

### **Request for Comment**

The FDIC encourages comments from all interested parties, including but not limited to insured banks and savings associations, technology companies and fintechs, other financial institutions or companies, depositors and financial consumers (of both FDIC-insured and uninsured institutions), consumer groups, researchers, trade associations, and other members of the financial services industry. In particular, the FDIC requests input on the following topics and questions:

### ***Official Sign***

The FDI Act requires that insured depository institutions display a sign relating to the insurance of deposits at each place of business maintained by that institution in accordance with regulations issued by the FDIC.<sup>4</sup> The implementing regulation, 12 CFR 328.2(a), requires the sign to be displayed continuously at each station or window where insured deposits are usually and normally received in the depository institution's principal place of business and at all of its branches.<sup>5</sup> The official sign must be 7" x 3" with black lettering on a gold background.<sup>6</sup> The official sign is permitted – but not required – to be displayed in other locations<sup>7</sup> and on or at "Remote Service Facilities."<sup>8</sup> In lieu of the official

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<sup>4</sup> See 12 USC 1828(a)(1)(A).

<sup>5</sup> Part 328 does not apply to uninsured offices or branches of insured depository institutions located outside the United States. 12 CFR part 328.

<sup>6</sup> 12 CFR 328.1(a).

<sup>7</sup> 12 CFR 328.2(a)(1)(i).

<sup>8</sup> 12 CFR 328.2(a)(1)(ii). "Remote Service Facilities" are defined as including "any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received."

sign, banks may vary the sign subject to the minimum standards set for the sign.<sup>9</sup>

Non-English equivalent signs must be approved by the FDIC.

The FDIC seeks comments on all aspects of the sign regulation, including the following specific questions:

1. Should the rule continue to require the sign be a minimum size and a specific color?

Is this needed to ensure consumers understand “deposit insurance?”

2. Should the rule continue to link the placement of the sign to each teller station or window where insured deposits are usually and normally received?
3. Should the rule take into account changes in places where deposits are “usually and normally received” by banks? How?
4. Should the FDIC’s current approach of allowing for permissive or optional placement and use of signage be broadened? How?
5. Does the rule’s definition of “Remote Service Facility” appropriately reflect current banking practices? For example, should the list of facilities (any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received) be broadened? If so, what other “facilities” should be included?
6. Are FDIC-insured institutions currently displaying a digital representation of the FDIC sign or logo on their websites / mobile apps at account opening? If not, should they do so?
7. Are FDIC-insured institutions currently displaying a digital representation of the FDIC sign or logo on their websites / mobile apps each time a consumer deposits funds? If not, should they do so?
8. Are alternative means of displaying an official FDIC sign, beyond a two-dimensional

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<sup>9</sup> 12 CFR 328.2(a)(2).

- placard, appropriate in places such as bank “cafes” and through digital means? How might this be implemented for different delivery channels (*e.g.*, brick-and-mortar, website, app-based)?
9. As noted above, the current regulation requires that the official FDIC sign be displayed continuously at each station or window where insured deposits are usually and normally received in the depository institution’s principal place of business and at all of its branches. Should the rule continue to require that the sign be displayed continuously, or should it allow for digital displays or representations that are not continuously displayed?
10. To what extent do the existing rules enable consumers to distinguish between FDIC-insured institutions and uninsured entities? Are there data, surveys, and studies on this issue?

### ***Official Advertising Statement***

The current rule requires bank advertisements<sup>10</sup> that promote deposit products and services or promote non-specific banking products and services offered by the institution to state that the bank is a “Member of the Federal Deposit Insurance Corporation,” “Member of FDIC,” or “Member FDIC,” or that the bank use the FDIC’s symbol (taken from the official sign).<sup>11</sup> This advertising statement seeks to enable consumers to recognize FDIC-insured deposit products, as contrasted with non-deposit investment products that are not insured. Size, print legibility and proportions are prescribed.<sup>12</sup> Insured and uninsured (foreign) branches must be identified.<sup>13</sup>

Insured depository institutions may not include the official advertising statement

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<sup>10</sup> “Advertisement” is defined as “a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.” 12 CFR 328.3(a).

<sup>11</sup> 12 CFR 328.3(c)(1).

<sup>12</sup> 12 CFR 328.3(b)(2).

<sup>13</sup> 12 CFR 328.3(c)(2).



or other statements that imply Federal deposit insurance in any advertisement relating solely to “non-deposit products” or “hybrid products.”<sup>14</sup> With “mixed” advertisements for both insured deposit products and uninsured or hybrid products, the official advertising statement must be segregated within the ad.<sup>15</sup> “Hybrid product” means “a product or service that has both deposit product features and non-deposit product features.”<sup>16</sup> “Non-deposit products” are defined to include “insurance products, annuities, mutual funds and securities” but not credit products.<sup>17</sup>

The FDIC seeks comments on all aspects of the official advertising statement regulation, including the following specific questions:

11. Can the regulation be better clarified regarding which types of advertising require the inclusion of the official advertising statement? Should some forms of advertising currently subject to the requirement be made exempt? Are there newer forms of advertising that do not now but should include the official advertising statement?
12. How do banks currently provide the advertising statement when promoting deposit products through non-traditional channels?
13. If a bank is identified in a nonbank’s promotion or advertisement for a deposit product or service, should the advertising statement be required, or conversely, should it be prohibited given that the advertisement is from an uninsured entity?

### ***Technological Solutions***

The FDIC regularly receives reports of fraudulent communications made to consumers that appear to be from FDIC-insured entities, but actually originate from fraudsters. These types of scams may involve a variety of electronic communication

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<sup>14</sup> 12 CFR 328.3(e)(2) and (e)(3).

<sup>15</sup> 12 CFR 328.3(e)(4).

<sup>16</sup> 12 CFR 328.3(e)(1)(ii).

<sup>17</sup> 12 CFR 328.3(e)(1)(i).

channels, including e-mails, websites, text messages, and social media posts. Some scam messages might ask the recipient to “confirm” or “update” confidential personal financial information, such as bank account numbers, Social Security numbers, dates of birth and other valuable details. Other scams might ask for payments or deposits to be sent, for example, by money order, Automated Clearing House (ACH) credit, wire transfer service, peer-to-peer payment service, gift cards, or digital currency. Banks also face risks that fraudsters may be using their names and brands to perpetrate such frauds.

The FDIC is exploring whether technological or other solutions might enable consumers to validate when they are interacting with a FDIC-insured financial institution when visiting websites and using apps on mobile devices. The FDIC seeks comments on how technology might be utilized to allow consumers to distinguish FDIC-insured banks and savings association from nonbanks across various web and digital channels, including the following specific questions:

14. Do consumers look for the FDIC name or logo when using financial institution websites and apps to confirm the validity of insured institutions’ authenticity? Do they look for the logo when deciding to open new deposit accounts? During every interaction?
15. What technological options or other approaches could be utilized to allow consumers to distinguish FDIC-insured banks and savings associations from nonbanks across web and digital channels? What are the benefits and drawbacks of each approach? Is it necessary or desirable for the FDIC to try to “solve” this by rule, or can private sector initiatives better address this issue?
16. If the FDIC develops a technological solution to allow consumers to distinguish FDIC-insured banks and savings associations from nonbanks across web and digital channels, what challenges would institutions have in implementing such solutions? How would any solution work with third parties that have established legitimate

- business relationships with banks or savings associations?
17. If the FDIC develops a technological solution to allow consumers to distinguish FDIC-insured banks and savings associations from nonbanks across web and digital channels, should its use be limited to FDIC-insured banks, or should third parties that market or facilitate access to deposit products (*e.g.*, prepaid program managers, fintechs) be permitted or required to use such a logo in certain circumstances?

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 5, 2021.

**James P. Sheesley,**

*Assistant Executive Secretary.*

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